

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL MARCAVAGE, et al.,)
)
 Plaintiffs,)
)
 v.) No. 06 C 3858
)
CITY OF CHICAGO, et al.,)
)
 Defendants.)


MEMORANDUM ORDER

Metropolitan Pier and Exposition Authority ("Authority"), one of the defendants in this multiplaintiff, multidefendant action, has filed its Answer to the First Amended Complaint. This memorandum order is issued sua sponte to address some matters raised by that responsive pleading, including its affirmative defenses ("ADs").

To begin with the Answer itself, many of its paragraphs are at odds with the roadmap prescribed by the second sentence of Fed. R. Civ. P. ("Rule") 8(b) as the basis for a defendant's obtaining the benefit of a deemed denial of a plaintiff's allegations--see App. ¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001). If it hereafter develops that Authority must remain in this lawsuit (more of this later), Answer ¶¶5-11, 16-39, 54 and 63 will have to be corrected. And if such is the case, the oxymoronic denial contained in each of those paragraphs--a denial that cannot be advanced in objective good faith if the Rule 8(b) disclaimer

really applies--will have to be deleted.

As for the ADs, they impose a threshold burden on plaintiffs. AD 2 asserts the absence of any case or controversy, which if true would require Authority's dismissal from this action, and AD 3 asserts the constitutionality of the Authority's complained-of actions in light of an earlier decision by our Court of Appeals. Accordingly plaintiffs' counsel is ordered to file a memorandum in response to both those ADs on or before October 10, 2006 to permit those subjects to be discussed at the next scheduled status hearing in this case.

A handwritten signature in cursive script, reading "Milton I. Shadur".

Milton I. Shadur
Senior United States District Judge

Date: September 25, 2006